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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/909,233 | 07/19/2001 | Peter Robert Foley | CM2505 | 8663 |

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

| EXAMINER | |
|---|---|
| DELCOTTO, GREGORY R | |
| **ART UNIT** | **PAPER NUMBER** |
| 1751 | |

DATE MAILED: 06/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|---|---|---|
| | 09/909,233 | FOLEY ET AL |
| | Examiner | Art Unit |
| | Gregory R. Del Cotto | 1751 |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *09 October 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-44* is/are pending in the application.

4a) Of the above claim(s) *36-40* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35 and 41-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-44* are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

## DETAILED ACTION

1. Claims 1-44 are pending. Note that, the preliminary amend. filed 10/9/01 has been entered.

### *Priority*

Acknowledgment is made of applicant's claim for foreign priority based on applications filed in PCT branch. It is noted, however, that applicant has not filed a certified copy of the PCT/US00/34907, filed 12/21/00, PCT/US00/34906 filed 12/21/00, PCT/US00/20255, filed 7/25/00 and PCT/US00/19619, filed 7/19/00 applications as required by 35 U.S.C. 119(b).

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-35 and 41-44, drawn to a hard surface cleansing composition, classified in class 510, subclass 237.

II. Claims 36-40, drawn to a method of removing soils from cookware and tableware, classified in class 134, subclass 25.2.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group (I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the

composition of Group I can be used in a materially different method such as in a method of washing laundry.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Kevin Waugh on June 2, 2003, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-35 and 41-44. Affirmation of this election must be made by applicant in replying to this Office action. Claims 36-40 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-8, 10-29, 33-35, 41, and 42 are rejected under 35 U.S.C. 103(a) as obvious over Feng (US 5,929,007) in view of Trinh et al (US 6,194,362).

Feng teaches alkaline aqueous hard surface cleaning compositions which exhibit good cleaning efficacy against hardened dried or baked on greasy soil deposits. The compositions comprise 0.01 to 0.85% by weight of amine oxide, 0 to 1.5% by weight of chelating agent, 0.01% to 2.5% by weight of caustic, 3% to 9% by weight of glycol ether solvent system comprising one glycol ether or glycol ether acetate solvent having a solubility in water of not more than 20% by weight water and a second glycol ether or glycol ether acetate having a solubility of approximately 100% by weight wherein the ratio of the former to the latter is from 0.5:1 to 1.5:1, 0 to 5% by weight of a water-soluble amine containing organic compound, 0 to 2.5% by weight of a soil anti-

redeposition agent, and 0 to 2.5% of optional constituents. See Abstract. The caustic agent is present in the compositions to ensure that the overall pH of the compositions is at least 11.5 or greater. Suitable solvents which exhibit a solubility in water of approximately 100% by weight include diethylene glycol n-butyl ether. See column 4, lines 20-65. The compositions preferably include a soil antiredeposition agents which may be synthetic hectorite, colloidal silica, etc. See column 5, lines 50-69. Another desirable additive is a thickening agent such as those based on alginates and gums including xanthan gum. See column 6, lines 5-40.

Specifically, Feng teaches 2.0% amine oxide, 0.5% EDTA salt, 0.8% NaOH , 3.0% monoethanolamine, 3.0% glycol ether, low water soluble, 3.7% glycol ether, high water soluble, the balance water. See column 9, lines 35-50. The low water soluble glycol ether is propylene glycol n-butyl, the high water soluble glycol ether is dipropylene glycol methyl ether, etc.

Feng does not specifically teach the use of odor masking perfumes or a detergent composition containing a solvent, an odor masking perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Trinh et al teach liquid aqueous, hard surface detergent compositions having improved cleaning and good filming/streaking characteristics comprising from about 0.0015 to about 3% of a blooming perfume composition comprising at least about 50% of blooming perfume ingredients selected from the group consisting of perfume ingredients having a boiling point of less than about 260 degrees Celsius; from about

0.001% to about 2% of a detergent surfactant; from about 0.5% to about 30% of a hydrophobic solvent, and the balance being an aqueous solvent system comprising water and a solvent such as methanol, ethanol, isopropanol, ethylene glycol, propylene glycol, glycol ethers, etc. See column 1, line 55 to column 2, line 30. Suitable perfumes include blooming perfume ingredients and extensive mixtures of perfumes, including ionone, which encompass the blooming perfumes and ionones as recited by the instant claims. See column 6, line 10 to column 10, line 1.

Suitable glycol ethers include monopropylene glycol monopropyl ether, diethyleneglycolmonohexyl ether, monoethyleneglycol monobutyl ether, etc. See column 14, lines 54-65.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a mixture of perfume ingredients as recited by the instant claims in the composition as taught by Feng et al, with a reasonable expectation of success, because Trinh et al teach a similar hard surface cleaning composition containing such perfume ingredients and further, Feng et al teach the use of optional components including perfumes.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a solvent, an odor masking perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Feng et al in combination with Trinh et al suggest cleaning composition

containing a solvent, an odor masking perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Note that, the Examiner asserts that the broad teachings of Feng et al in combinaion with Trinh et al would encompass compositions having the same pH, liquid surface tension, and other physical parameters as recited by the instant claims because Feng et al in combination with Trinh et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feng (US 5,929,007) in view of Trinh et al (US 6,194,362) as applied to claims 1-8, 10-29, 33-35, 41, and 42 above, and further in view of Ofosu-Asante (US 5,739,092).

Feng and Trinh et al are relied upon as set forth above. However, neither reference teach the use of a divalent cation in addition to the other requisite components of the composition as recited by instant claim 9.

Ofosu-Asante teaches liquid or gel dishwashing detergent compositions containing alkyl ethoxy carboxylate surfactant, calcium or magnesium ions, etc. See Abstract. The presence of calcium or magnesium ions improves the cleaning of greasy soils for compositions, manifest mildness to the skin, and provide good storage stability. See column 6, lines 40-55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a magnesium or calcium ion(s) in the cleaning compositions taught by Feng, with a reasonable expectation of success, because Ofosu-Asante

teaches the advantageous properties imparted to a similar hard surface cleaner when using magnesium and/or calcium ions.

Claim 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng (US 5,929,007) in view of Trinh et al (US 6,194,362) as applied to claims 1-8, 10-29, 33-35, 41, and 42 above, and further in view of JP 8151597.

Feng and Trinh et al are relied upon as set forth above. However, neither reference teach the use of a smectite clay thickening agent in addition to the other requisite components of the composition as recited by instant claim 32.

'597 teaches liquid detergent compositions containing a clay mineral having an average particle size of 10 to 5000 nm and anionic and nonionic surfactants. These minerals include montmorillonite, saponite, smectite and swelling mica. See Abstract.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a smectite clay having a particle size of less than 100 nm in the cleaning composition taught by Feng, with a reasonable expectation of success, because '597 teaches the use of smectite clay having a particle size of less than 100 nm in a similar detergent composition and Feng teaches the use of thickening agents and mixtures of thickening agents in general.

Claims 1-8, 10-19, 22-29, 33-35, and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trinh et al (6,194,362).

Trinh et al is relied upon as set forth above.

Note that, the Examiner asserts that the broad teachings of Trinh et al would encompass compositions having the same pH, liquid surface tension, and other

physical parameters as recited by the instant claims because Trinh et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

Trinh et al do not specifically teach the use of odor masking perfumes or a detergent composition containing a solvent, an odor masking perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a solvent, an odor masking perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Feng et al in combination with Trinh et al suggest cleaning composition containing a solvent, an odor masking perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feng (US 5,929,007) in view of Trinh et al (US 6,194,362) or Trinh et al (US 6,194,362) as applied to the rejected claims above, and further in view of Trinh et al (US 6,001,789).

Feng and Trinh et al are relied upon as set forth above. However, Feng or Trinh et al do not specifically teach the use of cyclodextrin in addition to the other requisite components of the composition as recited by the instant claims.

Trinh et al teach a cleaning composition in which a perfumes including ionones and musks are absorbed into a cyclodextrin carrier material to form complexes. See abstract and col. 7, line 35 to col. 12, line 55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a perfume-cyclodextrin complex in the cleaning composition taught by Feng or Trinh et al, with a reasonable expectation of success, because Trinh et al teach the use of a perfume-cyclodextrin complex a similar cleaning composition and further, Feng or Trinh et al teaches the use of perfumes in general which may be absorbed into a perfume containing carrier.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-35 and 41-44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 37-42 of 09/909403 and claims 87-91 of 09/909288. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 87-91 of

09/909288 and claims 37-42 of 09/909403 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GRD
June 16, 2003

GREGORY DELCOTTO
PRIMARY EXAMINER